

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Implementation of the Pay Telephone  
Reclassification and Compensation  
Provisions of the Telecommunications  
Act of 1996

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CC Docket No. 96-128

**OPPOSITION OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO  
ATX/CORECOMM'S THIRD SUPPLEMENT TO  
JOINT MOTION FOR EXTENSION OF TIME**

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March 7, 2005

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The American Public Communications Council ("APCC") hereby opposes the "Third Supplement To Joint Motion For Extension Of Time" ("3d Supp.") filed February 23, 2005, in this proceeding by ATX Licensing, Inc. and CoreComm Newco, Inc. ("together, "ATX"). ATX, which is already eight months late in submitting the System Audit Report required by Section 64.1320(b) of the Commission's payphone compensation rule,<sup>1</sup> now seeks permission to delay the filing of its System Audit Report until July 1, 2005 – a full year after the report was due.

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<sup>1</sup> See 47 CFR § 64.1320(b), *adopted in Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975 (2003) ("Order"), *recon.* 19 FCC Rcd 21457 (2004) ("Order on Reconsideration").

For the reasons stated below and in APCC's earlier opposition to the requests for additional time of ATX and other carriers,<sup>2</sup> the Commission should deny ATX any extension of the audit report deadline. In any event, the Commission must clarify that, pursuant to the *Order on Reconsideration*, a Completing Carrier who purports to pay compensation based on unaudited call data must pay for 100% of the calls delivered to its switch.

**I. ATX HAS NOT JUSTIFIED A WAIVER OF THE COMMISSION'S AUDIT RULE**

In its earlier opposition APCC detailed the reasons why ATX was not entitled to a waiver of the requirement to file a timely audit report. Now, as ATX acknowledges in the Third Supplement, ATX is requesting more time even though it has already missed, three times, its own proposed extended deadlines for filing the System Audit Report. 3d Supp. at 1. Even under an extraordinarily lenient approach to granting waivers, three strikes is an out. ATX's request for additional time must be denied.

Moreover, as noted in APCC's opposition to ATX's prior requests, ATX has been on notice of its compensation obligations since October 3, 2003. APCC Opposition at 3. Yet, more than seventeen months after the Commission released the order adopting the system audit rule, and eight months after ATX first requested an extension of the System Audit Report filing date, ATX still has not yet even taken the step of hiring an auditor. 3d Supp. at 2. While APCC recognizes that ATX is in bankruptcy, and that the bankruptcy process entails delay, bankruptcy alone cannot excuse a carrier

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<sup>2</sup> See Opposition of the American Public Communications Council to Requests for Additional Time to File System Audit Reports (filed December 6, 2004) ("APCC Opposition").

from timely compliance with Commission rules. Given ATX's repeated delays in compliance, the only possible conclusion is that ATX has had insufficient motivation to impress upon the bankruptcy court the importance of compliance with the audit requirement. ATX's dilatory behavior is a clear signal that only the initiation of forfeiture proceedings will produce the necessary sense of urgency.

The Commission has already given notice that it will enforce its rules strictly against carriers who "have been lax in fulfilling their obligations." *Order* ¶44; *see also Order on Reconsideration* ¶5 n.17. The Commission should make clear that even a bankrupt carrier is not entitled to be excused from compliance with FCC rules for an entire year.

## **II. COMPLETING CARRIERS WHO DO NOT HAVE AUDITED DATA FOR A COMPENSATION PERIOD MUST PAY FOR 100% OF CALLS DELIVERED TO THE CARRIER'S SWITCH**

In its earlier opposition to requests for additional time, APCC urged the Commission to clarify that, if a Completing Carrier fails to conduct a timely audit, the carrier must pay for 100% of the calls delivered to its switch by Intermediate Carriers. In the *Order on Reconsideration*, the Commission determined that, if a Completing Carrier enters a payment arrangement whereby an Intermediate Carrier pays for 100% of calls delivered to the Completing Carrier's switch, and the Completing Carrier terminates or disavows the payment arrangement, the Completing Carrier may be required to pay based on the 100% payment formula unless it first complies with the audit requirement. *Id.* at 21469 ¶19. As the Commission explained, if a Completing Carrier tries to pay for completed calls based on "no call completion data, or unaudited

call completion data, this would not protect the PSP's interest in receiving compensation for each and every completed call." *Id.* The same principle applies when a Completing Carrier like ATX allows quarter after quarter to pass without completing the required audit. Without the audited call records required by the Commission, there is absolutely no legally cognizable basis for crediting the Completing Carrier's ability to track calls.

ATX's case illustrates the importance of this ruling. ATX is purporting to track calls for a full year based on an unaudited call tracking system. It is simply incorrect to say that "no one will be harmed by" this year of unaudited call tracking. 3d Supp. at 2. The whole purpose of the audit is to ensure that resellers like ATX have mended their ways<sup>3</sup> and have actually instituted procedures to accurately track dial-around calls completed from payphones. *Order* at 19987 ¶26, 19993 ¶ 38; *Order on Reconsideration* 21469 ¶ 19 n. 70 (audit ensures accurate call data). Although the PSPs represented by APCC Services have received some compensation from ATX under the revised compensation rule, in the absence of an audit there is no assurance whatsoever as to the accuracy of ATX's compensation payment. As the Commission stated in the *Order on Reconsideration*, "in an enforcement action, [absent a timely audit,] a PSP would not have accurate evidence upon which to collect compensation." *Id.* at 21469 ¶ 19.

Therefore, for the four quarters for which ATX is purporting to make compensation payments without undergoing the required audit, ATX must be required to pay for 100% of calls delivered to a carrier's switch.

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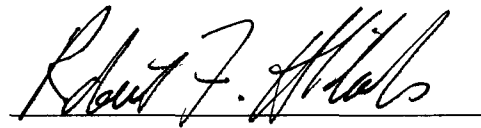
<sup>3</sup> Prior to ATX's filing for bankruptcy, APCC Services prosecuted several complaints against ATX for non-payment or underpayment of dial-around compensation. Although ATX did not file for bankruptcy until January 15, 2004, APCC Services customers received no compensation payments from ATX for any compensation period after third quarter 1999.

## CONCLUSION

For the foregoing reasons, the Commission should deny ATX's request for even more time to postpone compliance with the audit requirement of the payphone compensation rule. Regardless, the Commission should rule that all Completing Carriers must pay for 100% of calls delivered to their switches for any quarter in which they are attempting to use an unaudited call tracking system.

Dated: March 7, 2005

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

Albert H. Kramer

Robert F. Aldrich

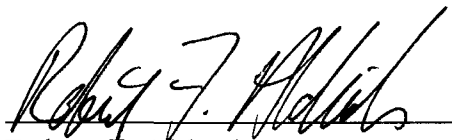
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## CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2005, the foregoing Opposition of the American Public Communications Council to Requests for Additional Time to File System Audit Reports was delivered via first-class U.S. Mail, postage pre-paid to the following:

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